

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Niederhause

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FILE: B-214612.2**DATE:** May 22, 1984**MATTER OF:** Triad Associates, Inc.--Request for
Reconsideration**DIGEST:**

Prior decision is affirmed where request for reconsideration fails to specify information not previously considered or to demonstrate that errors of law exist in the prior decision.

Triad Associates, Inc. requests reconsideration of our decision, Triad Associates, Inc., B-214612, March 26, 1984, 84-1 CPD ¶ _____, in which we summarily denied in part and dismissed in part the firm's protest of the award of a contract under invitation for bids (IFB) No. GS-05B-42439 issued by the General Services Administration (GSA) for guard services. Triad had complained that the agency improperly rejected its bid as nonresponsive because the firm offered a bid acceptance period shorter than that called for in the IFB, despite the fact that Triad had extended its offer at the contracting officer's request. We concluded that the issue of the responsiveness of the bid was rendered moot by the fact that the firm's offered acceptance period expired well before GSA awarded the contract. Additionally, we dismissed Triad's allegation that the awardee did not qualify as a small business concern, since the Small Business Administration (SBA), not this Office, has exclusive authority to determine such matters.

In entertaining requests for reconsideration, we will not reverse our original decision unless the request specifies information not previously considered or demonstrates that errors of law exist in the decision that warrant reversal. See S.A.F.E. Export Corporation--Request for Reconsideration, B-209491.2; B-209492.2, Oct. 4, 1983, 83-2 CPD ¶ 413. Triad has not met that burden here, and we affirm our March 26 decision.

The IFB provided that bids offering less than 60 days for acceptance by the government from the date set for opening bids would be considered nonresponsive.

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Allegedly by error, Triad indicated that it was offering only a 15-day acceptance period. Bids were opened on December 14, 1983. On January 12, 1984, the contracting officer requested Triad and other bidders to extend their offers for an additional 60 days, until April 14, because the agency had determined that it would be unable to complete its evaluation and make the award within the original 60-day period. Triad extended its offer. However, after subsequently realizing that the firm had in fact offered only a 15-day period to begin with, the contracting officer informed Triad that the request for an extension had been made inadvertently and rejected the bid as nonresponsive.

We stated in our March 26 decision, citing Werres Corporation, B-211870, Aug. 23, 1983, 83-2 CPD ¶ 243, that a bidder offering a bid acceptance period shorter than that called for in the IFB is effectively limited to its offer, and cannot be allowed to extend that acceptance period, either before or after its expiration, where other bidders offered the longer requested period. Triad, in its request for reconsideration, asserts that this principle is inapplicable to its circumstance (and that the cited case therefore is distinguishable), since the award was not made within the original-60 day period. Triad suggests that although the bidders who offered 60-day acceptance periods initially were bound to their bid prices longer than Triad was, they could have refused when asked to extend, so that at the end of the 60-day period all bidders, including Triad, were in the same competitive position. In this respect, Triad asserts that guard services by their nature are not subject to rapid price or market fluctuation, so that bid prices to furnish such services remain fairly constant.

As a general rule, the longer a bid must be exposed to the uncertainties of the marketplace, the greater the risk and thus the higher the bid must be. Hild Floor Machine Co., Inc., B-196419, Feb. 19, 1980, 80-1 CPD ¶ 140. Despite Triad's assertion that it did not intend to offer a shorter acceptance period, we are constrained to assume that Triad's bid price, based upon a 15-day period, may have been lower than the bid prices of those other bidders who offered the 60-day period as requested, precisely because the price was offered for one-fourth as long. Triad thereby had an initial price advantage over its competitors, because it basically bid on a different

basis than they did.¹ Allowing Triad to revive its expired bid under these circumstances would prejudice the higher bidders, since Triad would be able to retain its price advantage even though the results of the competition could have been different if all bidders, including Triad, had competed on an equal basis, that is, on either a 15-day or a 60-day period. Id. The assertion that the cost of guard services may be fairly static in relation to the marketplace does not, in our view, obviate this conclusion.

Accordingly, we see no basis to reverse or modify our prior decision on this issue.

Triad also complains that the awardee under the solicitation does not qualify as a small business concern. In its initial letter of protest, Triad stated that the contracting officer was or should have been aware that the awardee did not qualify for small business status, evidenced by the fact that the prior contract that firm had held for the same services in itself was large enough to disqualify the firm for the present procurement (apparently in terms of the price for that contract causing the awardee's average annual receipts to exceed the size standard for the present procurement). In its request for reconsideration, Triad now alleges that the awardee had made "patent misrepresentations" in its self-certification as a small business, and urges that this Office cannot ignore such misrepresentations and therefore must submit the matter to the SBA for a determination.

It is not within our bid protest function, however, to refer to the SBA protests regarding small business size status. As we stated in our March 26 decision, the proper forum to address allegations regarding a small business bidder's size status is the SBA, not this Office, because the SBA is statutorily empowered with final authority to determine such matters. See Pearce Trawick Contractors, B-214680, April 3, 1984, 84-1 CPD ¶ ____; 15 U.S.C. § 637(b)(6) (1982).

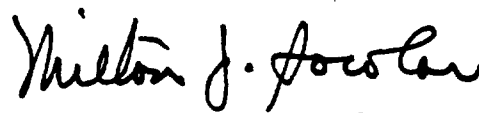
¹Indeed, this is the reason why a bid offering less than a required acceptance period generally must be rejected. As stated above, however, we did not reach the issue of Triad's responsiveness in our prior decision.

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Moreover, a contracting officer, in the absence of a timely size status protest, generally has authority to accept at face value a self-certification. Nevertheless, if information is brought to the attention of the contracting officer, or if information whose existence and significance should reasonably be discovered by the contracting officer is readily available to him, that reasonably impeaches the self-certification, then the contracting officer must independently file a direct size status protest with the SBA. See Foam-Flex, Inc., 62 Comp. Gen. 300 (1983), 83-1 CPD ¶ 383; Federal Procurement Regulations (FPR) § 1-1.703-1 (1964 ed.).

It is apparent that Triad neglected to file a timely size status protest with the contracting officer. Although Triad belatedly implies, in its request for reconsideration, that the contracting officer has chosen to ignore the awardee's "patent misrepresentations" in the awardee's self-certification, we see no evidence apart from Triad's unsupported allegation that the contracting officer had or has before him information which reasonably impeaches that self-certification, so that he must independently file a protest with the SBA. In our view, Triad's assertion that the previous contract by itself was large enough to disqualify the awardee does not necessarily establish that the awardee furnished a fraudulent self-certification. On the other hand, should substantive evidence of the alleged misrepresentation arise, we assume the contracting agency will refer the matter to the SBA.²

Triad has failed to show that our March 26 decision should be reversed or modified. The decision is affirmed.

for 
Comptroller General
of the United States

²In this regard, a protest by a contracting officer is timely for the purpose of the procurement in question whether filed with the SBA before or after award. FPR § 1-1.703.2(b)(2).